

**When recorded, return to:**

Bryan Cave LLP  
Two North Central Avenue  
Suite 2200  
Phoenix, Arizona 85004-4406  
Attn.: Derek L. Sorenson, Esq.

## **JOINT RIGHT OF ACCESS AGREEMENT**

This Joint Right of Access Agreement (this "Agreement") is made as of the 8th day of January, 2002, by **JAREN ASSOCIATES #4**, an Arizona general partnership ("Jaren Associates"), and **ARIZONA DEPARTMENT OF TRANSPORTATION**, a political subdivision of the State of Arizona ("ADOT").

### **RECITALS**

A. Pursuant to Arizona State Land Lease No. 03-52415, as amended and supplemented from time to time ("Jaren Associates' Lease"), Jaren Associates currently holds a leasehold interest in the real property described on Exhibit A attached hereto (the "Property").

B. Pursuant to Arizona State Land Department Right of Way No. 16-91515, as amended and supplemented from time to time, ADOT currently holds an easement interest in the right of way described therein (the "Right of Way").

C. A portion of the Right of Way traverses and encumbers a portion of the Property (the "Encumbered Area").

D. ADOT has constructed and installed five box culverts within the Encumbered Area ("ADOT's Drainage Improvements").

E. In connection with Jaren Associates' development of the Property, Jaren Associates intends and desires to construct and install certain drainage improvements within the Encumbered Area including, but not limited to, the installation and connection of certain drainage culverts to ADOT's Drainage Improvements ("Jaren Associates' Drainage Improvements").

F. ADOT's interest in the Right of Way is subject to Jaren Associates' right, at its sole cost and expense, to construct and install Jaren Associates' Drainage Improvements within the Encumbered Area and to connect same to ADOT's Drainage Improvements.

G. Jaren Associates and ADOT desire to execute and acknowledge this Agreement and cause same to be recorded.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Jaren Associates and ADOT hereby agree as follows:

1. Joint Access. Jaren Associates and ADOT hereby agree and acknowledge that each party shall have joint and equal access to and from the Encumbered Area for the purposes of (i) installing, constructing, operating, maintaining and repairing each party's own drainage improvements existing within the Encumbered Area, and/or (ii) exercising and enforcing any other rights under this Agreement provided, however, that a party's exercise of access rights under this paragraph 1 shall not unreasonably interfere with the other party's access rights hereunder.

2. Maintenance.

a. Each party shall, at its sole cost and expense, maintain its own drainage improvements existing within the Encumbered Area in good working condition and repair.

b. In the event either party fails to perform such party's repair and maintenance obligations pursuant to this Agreement (a "Non-performing Party"), the other party (a "Performing Party") may give such Non-performing Party written notice of such failure to repair and maintain and, if such Non-performing Party shall not complete such repair and maintenance activities within ten (10) working days after receipt of such notice, the Performing Party shall have the right (the "Performing Party's Cure Right"), but not the obligation, to make such repairs or perform such maintenance and such Non-performing Party shall reimburse the Performing Party upon demand for the cost and expense of completing such maintenance and/or repair. Notwithstanding the foregoing, in the event of a bona fide emergency, the Performing Party's Cure Right shall arise in the event the Non-Performing Party fails to begin taking appropriate repair and maintenance action within five (5) hours of receiving notice thereof from the Performing Party.

3. Restoration. Each party hereby covenants and agrees that, promptly after any excavation or construction within the Encumbered Area is performed or caused to be performed by such party, such party shall, at its sole cost and expense, restore the Encumbered Area to the same condition as existed before such excavation or construction.

4. Intentionally Blank.

5. Running of Benefits and Burdens. For so long as this Agreement remains in force and effect, all provisions hereof, including the benefits and burdens, shall run with the land and shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

6. Remedies. In the event of any breach of any provision of this Agreement, the non-breaching party may pursue any and all remedies available at law or in equity and, in elaboration and not in limitation of the foregoing, the non-breaching party may pursue any

proceedings at law or in equity to enjoin such breach and/or to recover damages for any such breach. Notwithstanding the foregoing, no breach of any provision of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement.

7. Notices. Any and all notices required or permitted hereunder shall be given in writing and telecopied, personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by Federal Express or other similar reputable overnight courier, addressed as follows:

To Jaren Associates: Jaren Associates #4  
c/o Westcor Partners  
11411 North Tatum Boulevard  
Phoenix, Arizona 85028-2399  
Attention: Mr. John F. Rasor  
Telecopier No.: 602-953-6298

With a copy to: Bryan Cave LLP  
Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406  
Attention: Derek L. Sorenson, Esq.  
Telecopier No.: 602-364-7070

To ADOT: Arizona Department of Transportation  
2140 W. HILTON AVE.  
PHOENIX AZ 85009  
Attention: DISTRICT ENGINEER  
Telecopier No.: (Fax) 602-712-6983

or at any other address or telecopier number designated by Jaren Associates or ADOT in writing, and any such notice or communication shall be deemed to have been given as of the date of receipt, if sent by telecopier, as of the date of delivery, if hand delivered or sent by overnight courier, as of three (3) days after the date of mailing, if mailed within the continental United States, or as of seven (7) days after mailing, if mailed outside the continental United States.

8. Governing Law. This Agreement shall be governed by the laws of the State of Arizona.

9. Time. Time is of the essence of this Agreement.

10. Attorneys' Fees. In the event of any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive reimbursement from the other party for reasonable costs and attorneys' fees in an amount determined by a court and not a jury.

11. Term. This Agreement shall automatically terminate upon the termination of Jaren Associates' Lease and, thereafter, the parties shall have no further right or obligation under

this Agreement, except for those rights and obligations which are expressly stated herein to survive the termination of this Agreement.

12. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

13. Severability. In the event any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

14. Effectiveness. This Agreement shall be effective as of the date first set forth above.

15. Counterparts. This Agreement may be executed in any number of counterparts and each thereof shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument.

16. See attached Plans


[SIGNATURES FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

JAREN ASSOCIATES #4, an Arizona general partnership

By: Paradise Ridge Limited Partnership, an Arizona limited partnership, a General Partner

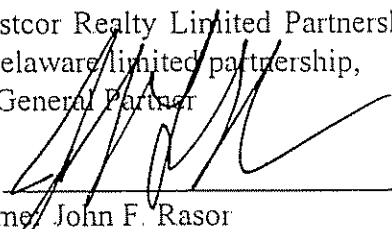
By: Landmark Land Company of Arizona, Inc., an Arizona corporation, its General Partner

By:   
Name: Steve Barrett  
Title: President

By: Paradise West #1 L.L.C., an Arizona limited liability company, a General Partner

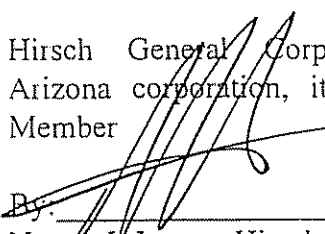
By: The Westcor Company II Limited Partnership, an Arizona limited partnership, its Managing Member

By: Westcor Realty Limited Partnership, a Delaware limited partnership, its General Partner

By:   
Name: John F. Rasor  
Title: Executive Vice President

By: Hirsch General IV, L.L.C., an Arizona limited liability company, a Member

By: Hirsch General Corporation, an Arizona corporation, its Managing Member

By:   
Name: L. Jerome Hirsch  
Title: President

ARIZONA DEPARTMENT OF TRANSPORTATION, a  
political subdivision of the State of Arizona

By:           Daniel S. Jones            
Its:           Deputy State Engineer

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

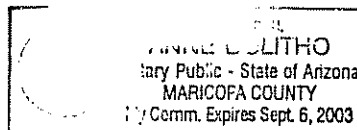
On this, the 29<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Steve Barrett, the President of Landmark Land Company of Arizona, Inc., an Arizona corporation and General Partner of Paradise Ridge Limited Partnership, an Arizona limited partnership and a General Partner of JAREN ASSOCIATES #4, an Arizona general partnership, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained on behalf of the general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Anne Bolitto*  
Notary Public

My Commission Expires:


9/6/03



STATE OF ARIZONA                         )  
  ) ss.  
County of Maricopa                         )

On this, the 27<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared John F. Rasor, the Executive Vice President of Westcor Realty Limited Partnership, a Delaware limited partnership and General Partner of The Westcor Company II Limited Partnership, an Arizona limited partnership and Managing Member of Paradise West #1 L.L.C., an Arizona limited liability company and a General Partner of JAREN ASSOCIATES #4, an Arizona general partnership, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained on behalf of the general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*[Signature]*  
Notary Public  OFFICIAL SEAL



My Commission Expires:

3-12 04

STATE OF ARIZONA

)

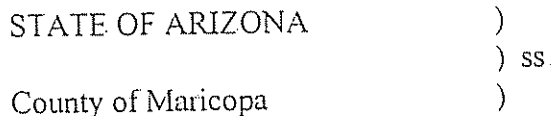
) SS.

)

On this, the 3<sup>rd</sup> day of December

Notary Public

July 27, 2004



STATE OF ARIZONA

)

) SS

)

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me, the \_\_\_\_\_

Notary Public

319621 6 [11/26/01 3:37 PM]  
118197



EXHIBIT A

Legal Description of Property

[Legal Description of Property Attached]

PARCEL DESCRIPTION  
TRACT 2.03  
PARADISE RIDGE

Tract 2.03 as shown on the STATE PLAT 34, PARADISE RIDGE, according to Book 416, Page 12, and Affidavit recorded in Instrument 96-0797420, dated November 12, 1996, both records of Maricopa County, said Tract Situated in Section 27, Township 4 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

SUBJECT to all easements of record with the Arizona State Land Department.